

§ 31.3

29 CFR Subtitle A (7-1-09 Edition)

(ii) Even though an applicant or recipient has never used discriminatory policies, the services and benefits of the program or activity it administers may not in fact be equally available to some racial or nationality groups. In some circumstances an applicant or recipient may properly give special consideration to race, color, or national origin to make the benefits of its program more widely available to such groups not then being adequately served. For example, where an employment service office is not adequately serving members of a particular racial or nationality group, it may establish special recruitment policies to make its program better known and more readily available to such group, and take other steps to provide that group with more adequate service.

(c) *Employment practices.* (1) Where a primary objective of the Federal financial assistance to a program to which this regulation applies is to provide employment, a recipient may not (directly or through contractual or other arrangements) subject an individual to discrimination on the ground of race, color, or national origin in its employment practices under such program including recruitment, examination, appointment, training, promotion, retention or any other personnel action.

(2) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the ground of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the ground of race, color or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this regulation applies, the provision of the foregoing paragraph shall apply to the employment practices of the recipient to the extent necessary to assure equality of opportunity to, and non-discriminatory treatment of, beneficiaries. Accordingly, the employment practices of recipients under programs enumerated in §§ 31.3(d)(2) and 31.3(d)(3) are subject to the provisions of this paragraph (c) to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of,

the beneficiaries of the Federal financial assistance. Any action taken by the Department pursuant to this provision with respect to a State or local agency subject to the Standards for a Merit System of Personnel Administration, 45 CFR part 70, shall be consistent with those standards and shall be coordinated with the United States Civil Service Commission.

(3) The requirements applicable to construction employment under any program for which Federal financial assistance is furnished by this Department shall be those specified in or pursuant to part III of Executive Order 11246 or any Executive order which supersedes it.

(d) In order that all parties may have a clear understanding of the applicability of the regulations in this part to their activities, there are listed in this section types of Federal financial assistance together with illustrations by way of example only, of types of activity covered by the regulations in this part. These illustrations and examples, however, are not intended to be all inclusive. The fact that a particular type of Federal financial assistance is not listed does not, of course, indicate that it is not covered by the regulations in this part. Moreover, the examples set forth with respect to any particular listed type of Federal financial assistance are not limited to assistance alone and the prohibited actions described may also be prohibited in programs or activities receiving other types of Federal financial assistance whether or not listed below.

(1) *Employment service.* (i) The registration, counseling, testing, recruitment, selection and referral of individuals for job openings or training opportunities and all other activities performed by or through employment service offices financed in whole or in part from Federal funds, including the establishment and maintenance of physical facilities, shall be conducted without regard to race, color, or national origin.

(ii) No selection or referral of any individual for employment or training shall be made on the basis of any job order or request containing discriminatory specifications with regard to race, color, or national origin.